

**Solicitation for Vendors
West Virginia Office of the Insurance Commissioner
Approved Market Conduct Examination Vendor List
INS13014**

Part 1 GENERAL INFORMATION

1.1 Purpose:

The West Virginia Department of Revenue, Offices of the Insurance Commissioner ("WVOIC "), is soliciting Vendors who wish to perform Market Conduct Examinations of insurance companies in the State of West Virginia, in compliance with West Virginia Code §33-2-9 and in accordance with the procedures established by the National Association of Insurance Commissioners ("NAIC") and contained in the NAIC Market Regulation Handbook ("Handbook"). Interested vendors are invited to submit an application in accordance with section 1.9 and resume addressing the required qualifications and specifications, as provided in Part 3, to the Insurance Commissioner in consideration for placement on the State's **Approved Market Conduct Examination Vendor List**.

• **PLEASE NOTE: Section 2.3 establishes a Maximum Fee Reimbursement Schedule.**

1.2 Project:

Projects and services required will include the drafting of formal reports of Market Conduct examinations that contain findings, conclusions and recommendations for corrective or regulatory action, and a description of issues of non-compliance with West Virginia's statutes, regulations, filing requirements and administrative procedures for various insurance companies conducting business with West Virginia.

1.3 Effective date:

Vendors may be scheduled to conduct examinations and/or training for state employed personnel on an as-needed basis for a three-year period beginning January 1, 2013 and ending December 31, 2015, at which time the agreements may, upon mutual consent, be renewed, with the possibility of an increase in the maximum fee schedule at the State's discretion. Such renewals shall be for a period of up to three (3) years maximum or until such time as it is necessary to obtain a new contract. Contracts for particular and specific projects will be considered and awarded as the need arises as provided for in Part in 3.4.10.

1.4 Inquiries:

All inquiries of specification clarification must be addressed in writing to:

Vickie Marcum, Administrative Support Manager
Market Conduct Examination Vendor List
West Virginia Offices of the Insurance Commissioner

Street Address
1124 Smith Street
Charleston, WV 25301
Fax: (304) 558-4967

Mailing Address
PO Box 50543
Charleston, WV 25305

1.5 Vendor Qualification:

Vendors participating in this process should complete and file a *Vendor Qualification and Disclosure Statement* (Form WV-1 attached) and remit the registration fee as part of its proposal. Vendor is not required to be a registered vendor in order to submit a proposal, but a selected vendor must register and pay the fee prior to the publication of the approved Market Conduct Examination Vendor List pursuant to this solicitation.

1.6 Oral Statements and Commitments:

Vendors must clearly understand that any verbal representations made, or assumed to be made during any oral discussions held between vendor's representatives and any State personnel are **not** binding on the State of West Virginia. Only the information issued in writing and added to the Market Conduct Examination Vendor Qualification specifications file by an official written addendum are binding on the State.

1.7 Economy of Preparation:

Proposals should be prepared simply and economically, providing a straightforward, concise description of vendor's abilities to satisfy the minimum requirements set forth below. Emphasis should be on completeness and clarity of content.

1.8 Mandatory Requirements:

The mandatory sections included in Parts 3 and 4 require a response from the vendor, and they describe the minimum requirements requested in this **Market Conduct Examination Vendor Qualification**. Any specification or statement containing the word "must," "shall," or "will" is mandatory. The vendor is required to meet the intent of the mandatory specifications in order to be eligible for consideration and to continue in the evaluation process. A simple "yes" or "no" response to these sections is not adequate. Failure to meet mandatory items shall result in disqualification of the vendor's proposal and the evaluation process terminated for that vendor. Decisions regarding compliance with the intent of any mandatory specification shall be at the sole discretion of the State.

1.8.1 Information Specifications:

Information specifications do not require a response from the vendor. They are intended to aid the vendor in structuring an effective proposal capable of meeting the needs of the State and should be given due consideration.

1.9 Vendor Qualification Submission:

1.9.1 Vendors must complete a response to all mandatory specifications or service specification requirements in order to be considered. Each proposal must be formatted as per the outline in Part 5.2 of this request. No other arrangement or distribution of the proposal information may be made by the vendor. Failure on the part of the vendor to respond to specific requirements detailed in this request may be a basis for disqualification of their proposal. The State reserves the right to waive any informality in the proposal format and minor irregularities.

1.9.2 All submissions must be delivered to the state **prior** to the date stipulated in the Market Conduct Examination Vendor Qualification as the opening date as specified in section 1.14. All submissions will be date and time stamped to verify official time and date of receipt. Only the written hardcopy submission will be accepted for timely filing purposes.

1.9.3 Vendors mailing their paper hardcopy proposals should allow sufficient time for mail delivery to ensure timely arrival..

Submit: The three (3) original hardcopy submission and an electronic copy (pdf) shall be delivered to the State at the addresses below. Each submission filed to demonstrate that the vendor meets minimum technical qualifications must be sealed in mailing envelopes or packages with the vendor's name and address written on the outside. An authorized member of the vendor's firm must sign the original submission in blue ink.

Vickie Marcum, Administrative Support Manager
Market Conduct Examinations – Vendor List
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PO Box 50543
Charleston, WV 25305

Email Address
Vickie.Marcum@wvinsurance.gov

1.9.4 Technical Qualifications

1.9.4.1 Technical Qualifications Submission Opening: The West Virginia Offices of the Insurance Commissioner's Evaluation Committee ("Evaluation Committee") will open the technical submissions **on the date and time specified** in the Market Conduct Examination Vendor Qualification.

1.9.4.2 Technical Qualifications Evaluation: The Evaluation Committee will review the technical submissions and evaluate the qualifications to determine if the applicant vendor is qualified, and make recommendations to the Commissioner or designee that said qualified vendors be added to the Market Conduct Examination Vendor List.

1.9.4.3 Agreement Approval and Award: After the technical qualifications have been opened and reviewed, the Evaluation Committee will make a recommendation to approve each qualified Vendor. Upon approval by the Commissioner or designee, the State will prepare for signature a **Memorandum of Understanding**, setting forth the basic terms and conditions. The Memorandum of Understanding will be mailed to qualified vendors for signature and must be returned in order to be placed on the Market Conduct Examination Vendor List.

1.10 Rejection of Proposals:

It is the State's intention to approve all qualified vendors according to the evaluation of the proposals agreeing to the cost constraints as outlined in 2.3 of this request. However, the State reserves the right to accept or reject any or all proposals, in part or in whole, at its discretion. The State reserves the right to withdraw this Market Conduct Examination Vendor List at any time and for any reason. Submission of, or receipt by the State, of proposals confers no rights upon the vendor nor obligates the State in any manner. Any agreement resulting in an award from a Market Conduct Examination Vendor Qualification will not be valid until properly approved and executed by the Insurance Commissioner, his/her designee and the vendor.

1.11 Incurring Costs:

The State and any of its employees or officers shall not be held liable for any expense incurred in the preparation and submission of any proposal or to attend any mandatory pre-bid meeting or oral presentations.

1.12 Addenda:

If it becomes necessary to revise any part of a Market Conduct Examination Vendor Qualification, an addendum will be issued to all vendors who received the original solicitation for the Market Conduct Examination Vendor Qualification and to any other interested parties.

1.13 Public Record:

1.13.1 Submissions are Public Record:

All documents submitted to the State relating to "**Market Conduct Examination Vendor Qualification**" /purchase orders/agreements are considered public records. As such, all bids, proposals, or offers submitted by a vendor shall become public information.

1.13.2 Written Release of Information:

All public information may be released with or without a Freedom of Information Act ("FOIA") request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document.

1.13.3 Risk of Disclosure:

The only exemptions to disclosure of public information are listed in West Virginia Code §29B-1-4. Primarily, trade secrets as submitted by a vendor are the only exemption to public disclosure. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The State will make a reasonable effort not to disclose information that is within the guidelines of §29B-1-4 and is prominently labeled "Proprietary Information Not for Public Disclosure." The State does not guarantee non-disclosure of any information to the public.

1.14 Schedule of Events:

Notice of Release of the Request	November 9, 2012 5 p.m.
Vendor's Written Questions Submission Deadline*	November 30, 2012 5 p.m.
OIC Response to Questions	December 7, 2012 5 p.m.
Submission Deadline (must be received by OIC)	December 21, 2012 5 p.m.
Approval Notifications Released (no later than)	January 4, 2013 5 p.m.

*Submissions **will** be accepted after this date and considered on a case-by-case basis.

1.15 No Debt Affidavit:

All vendors shall submit an affidavit regarding any debt owed to the State of West Virginia or any of its agencies. The affidavit must be signed and shall accompany the vendor's proposal. Failure to enclose the affidavit shall result in disqualification of the vendor from consideration.

PART 2 - OPERATING ENVIRONMENT

2.1 Location:

The regulated entities to be examined will be determined by the West Virginia Offices of the Insurance Commissioner on an as-needed basis.

2.2 Background:

The vendor shall provide all necessary field staff, including a qualified Examiner in Charge ("EIC"), to conduct the periodic full scope examination of the Market Conduct of various regulated entities conducting business within West Virginia. The examinations are to be conducted in compliance with West Virginia Code and State Rules; NAIC Market Regulation Examiners Handbook current edition; and the practices and procedures of the West Virginia Offices of the Insurance Commissioner. All Market Conduct examinations shall be performed under the direction of an Insurance Commissioner's designee.

From time to time, other services may be required of the vendor. These will be discussed as they become relevant.

2.3 Approved Maximum Fee Reimbursement Scheduleⁱ

The West Virginia Offices of the Insurance Commissioner has established the following fee schedule which represents the maximum rate of payment for the specified services:

Supervising Examiner/EIC	\$130.00/hr.
Staff Examiner	\$115.00/hr.
Information Systems Examiner	\$150.00/hr.
Actuary	\$250.00/hr.

Reimbursements will be limited to one (1) Supervising Examiner/EIC per project. Per diem expenses shall be billed at the per diem rates adopted by the State of West Virginia

Governor's Travel Rules. The per diem rates currently are those stated by the Federal Per Diem guidelines. Below is the link to Federal Per Diem guidelines.

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&channelId=15943&oid=16365&pageTypeId=8203&P=MTT&programId=9704&contentType=GSA_BASIC

PART 3 - PROCUREMENT SPECIFICATION

3.1 General Requirements:

The following will be considered the minimum content of the vendor's technical proposal:

- A. A statement of the objectives, goals and tasks to show or demonstrate the vendor's view of the nature of the agreement.
- B. The vendor shall provide a general description of the deliverables.
- C. An outline of the vendor's background and experience, with documentation outlining similar services provided for other regulatory jurisdictions during the past three years and provide the name, address and telephone number of three current references familiar with such services.
- D. The vendor must provide a list of personnel who will conduct the projects, detailing their training and work experience.

Specifications for Market Conduct Examiners:

Generally, the vendor must have the ability to provide an Accredited Insurance Examiner ("AIE"), Certified Insurance Examiner ("CIE") or Doctor of Jurisprudence ("JD") with respect to function in the capacity of EIC. Each EIC must also possess the Market Conduct Management ("MCM") designation. Targeted Market Conduct Examinations focusing on Unfair Trade Practice Act (UTPA) shall have a further requirement that the EIC be a Chartered Property Casualty Underwriter (CPCU). With respect to Multi-state Examinations each examiner shall have an AIE designation and the EIC shall have a CIE designation. The State reserves the right to reject any proposed EIC. In this event, the vendor will be required to provide another EIC who is acceptable to the State within five (5) working days. The EIC must have a minimum of five (5) years of insurance company market conduct examinations experience. Examiners should have a minimum of two years of insurance experience. For the proposed EIC, the vendor must furnish proof of certification and documentation of recent experience using the NAIC's Market Conduct Regulation Handbook. No change in personnel assigned to specific examinations will be permitted without the written approval of the Chief Market Conduct Examiner, or designee.

- E. A detailed work plan that will identify the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing.
- F. State reserves the option to include personnel employed by the state to be active

within any or all examinations for training purposes. Vendor shall be prepared to submit a detailed plan of various training activities to be performed if required.

3.2 Scope of Work:

The State desires that the vendor provide, at a minimum, the following services for each engagement:

- A. Prepare a work program that identifies specific examination procedures necessary to verify and confirm compliance with State statutes and rules.
- B. Prepare a summary of examination approach.
- C. Identify specific procedures that will be performed.
- D. Prepare a budget of time estimated to complete identified examination procedures. Keep records of budget variances with full explanations.
- E. Perform examination procedures appropriately based on the results of development of work program.
- F. Coordinate work of examination team members in accordance with pre-established guidelines.
- G. Document procedures followed through the preparation of examination work papers. Ascertain that procedures followed are those contained in the Handbook, or approved by the Chief Market Conduct Examiner, or their designee.
- H. Draft a formal Report of Examination that contains the findings, conclusions and recommendations of the examination team to be presented to the Offices of the Insurance Commissioner no later than thirty (30) days following completion of the field work.
- I. Perform follow-up procedures identified by the Chief Market Conduct Examiner or their designee.
- J. Other tasks as assigned or appropriate under the circumstances, including, but not limited to, training of in-house Market Conduct personnel assisting on the examination.

The EIC provided by the vendor will have full responsibility for the examination, including planning, assignment and supervision of staff; execution of the examination; conducting status meetings with the company management; preparing status reports on the progress of the examination; and the preparation of the final Report of Examination.

The vendor will provide the West Virginia Insurance Commissioner or his/her designee a written status report on a **semi-monthly basis** or as determined by the State and a report of findings within the time frame as specified in the agreement. Upon completion of the examination field work and submission of the Report of Examination the vendor will deliver to the West Virginia Insurance Commissioner or his/her designee a complete set of original work papers prepared in the format required by the policies and standards of the Handbook and the State. Work papers are the property of and will be retained by the West Virginia Offices of the Insurance Commissioner.

The vendor shall submit invoices, in arrears, to the Accounts Payable Division, Offices of the West Virginia Insurance Commission, P. O. Box 11681, Charleston, WV 25339. Invoices must be submitted to the State **once a month**.

The OIC reserves the right to retain twenty percent (20%) of the anticipated total cost of the project until a final report is submitted and adopted by the OIC.

3.3 Special Terms and Conditions:

3.3.1 Delivery of Service

Time is of the essence: Delivery requirements are essential. Failure to provide the product in the prescribed period of time as defined by contract will result in losses to the OIC associated with lost staff work opportunity, lost opportunity for future projects, costs associated with additional resources required to keep the project on schedule, and logistical costs associated with expediting delivery, as well as other potential direct and consequential losses.

The OIC agrees that Vendors shall have limits of liability for consequential damages, including damages for lost opportunity and lost opportunity for future projects.

The parties agree that in lieu of the OIC's rights to seek consequential damages as a result of delivery failures, the OIC shall be compensated for failure to deliver products as provided for in Section 3.4.14, Liquidated Damages.

3.3.2 Insurance Requirements:

At the time of selection, the vendor(s) must maintain, and provide evidence thereof, for the duration of the agreement, and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of West Virginia in the following types and amounts:

- A. Worker's Compensation Insurance covering all liability of the vendor arising under the Worker's Compensation Act.
- B. Comprehensive General Liability insurance in a broad form, written on an "occurrence" basis, with a combined single limit of not less than One Million Dollars (\$1,000,000) to include coverage for the following where exposure exists:
 - 1. Premises/operations
 - 2. Independent Contractors
 - 3. Products/Completed Operations
 - 4. Personal Injury
 - 5. Professional Liability
- C. Each vendor agrees that with respect to the insurance requirement referenced above, the State shall be provided with certificates of insurance naming the Offices of the Insurance Commissioner as an additional insured prior to commencement of the agreement and thereafter upon request with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration of or the cancellation of any policies. Said notices of insurance shall be provided to:

Vickie Marcum, Administrative Support Manager
Market Conduct Examinations - Proposal
West Virginia Offices of the Insurance Commissioner

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1124 Smith Street
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Vickie.Marcum@wvinsurance.gov

3.3.3 Other Requirements:

- A. Each vendor shall comply with the West Virginia Human Rights Act, as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to, the Equal Employment Opportunity Clause, West Virginia Code.
- B. In case of default by a vendor, the State may procure the services from other sources and hold the vendor responsible for any excess cost occasioned thereby.
- C. Invoices shall be submitted to the State office address provided in section 3.2; payment to be made within thirty (30) days of receipt. Final payments are to be made after the delivery and receipt of services.
- D. The approved vendors will be required to assume responsibility for all services offered in their submission. The State will consider the approved vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from any final agreements. Sub-agreements will be permitted only upon specific written permission of the State.
- E. Interpretation or Correction of the Market Conduct Examination Vendor Qualification.
 - 1. Vendors shall promptly notify the State in writing of any ambiguity, inconsistency or error they may discover upon examination of the Market Conduct Examination Vendor Qualification.
 - 2. Interpretations, corrections and changes to the Market Conduct Examination Vendor Qualification will be made by addendum. Interpretations, corrections or changes made in any other manner will not be binding.
- F. Any agreement resulting from this Examination Vendor Qualification shall be governed by and construed according to the laws of the State of West Virginia.
- G. Each vendor agrees to retain all books, records and other documents relevant to any agreement resulting from this Market Conduct Examination Vendor Qualification. for a period of not less than five (5) years.
- H. Each vendor agrees that any information concerning an insurance company examined by any vendor in the course of this engagement shall remain confidential. Except as may be required by State or federal law, regulation, or order, the vendor agrees not to release any information concerning said insurance company without prior approval of the Insurance Commissioner, or his/her designee or the consent of the insurance company.

3.3.4 License Requirements:

Where the services of an EIC are required pursuant to the Market Conduct Examination Vendor Qualification. Submission or the agreement, said individual shall have at least five (5) years of experience in the field of examination and provide a copy of their current license.

3.4 General Terms and Conditions:

By signing and submitting its proposal, the vendor agrees to be bound by all the terms contained in PART (3) of this Market Conduct Examination Vendor Qualification.

3.4.1 Conflict of Interest:

Each vendor affirms that it, its officers, members, or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance or its services hereunder. The vendor further covenants that in the performance of the agreement, the vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the State.

3.4.2 Prohibition Against Gratuities:

Each vendor shall warrant that it has not employed any company or person other than a bona fide employee working solely for the vendor or a company regularly employed as its marketing agent to solicit or secure the agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the agreement.

For breach or violation of this warranty, the State may have the right to annul the agreement without liability, and, at its discretion, to pursue any other remedies available under this agreement or by law.

3.4.3 Certifications Related to Lobbying:

Each vendor shall certify that no federal and/or state appropriated funds have been paid or will be paid, by or on behalf of the vendor, or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal and/or State entity, a Member of Congress and/or our West Virginia State Legislature, an officer or employee of Congress and/or our West Virginia State Legislature, or an employee of a Member of Congress and/or our West Virginia State Legislature in connection with the awarding of any Federal and/or West Virginia agreement, the making of any Federal and/or West Virginia grant, the making of any Federal and/or West Virginia loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal and/or West Virginia agreement, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress and/or the Legislature of the State of West Virginia, an officer or employee of Congress and/or the Legislature of the State of West Virginia, or an employee of a Member of Congress and/or the Legislature of the State of West Virginia in connection with this Federal or State of West Virginia agreement, grant, loan, or cooperative agreement, the vendor shall complete and submit a disclosure form to report the lobbying.

Each vendor shall require that this language of certification be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and agreements under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this agreement was made and entered into.

3.4.4 Vendor Relationship:

The relationship of each vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated, or created by the parties to this agreement. The vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Each vendor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this Market Conduct Examination Vendor Qualification and resulting agreement. Neither the vendor, nor any employees or contractors of the vendor, shall be deemed to be employees of the State for any purposes whatsoever, nor shall neither the vendor, nor any employees or contractors of the vendor, be eligible to participate in any benefit program provided by the State to its employees.

Each vendor shall be exclusively responsible for the payment of his/her employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including, but not limited to, Workers' Compensation and Social Security obligations, and licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Each vendor shall hold harmless the State, and shall provide the State with a defense against any and all claims and/or lawsuits, including but not limited to the foregoing payments, withholdings, contributions, taxes, Social Security taxes and employer income tax returns.

Each vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this agreement to any person, corporation, partnership, association, or entity without expressed written consent of the State.

3.4.5 Indemnification:

Each vendor agrees to indemnify, defend and hold harmless the State, its officers and employees from and against:

- A. Any claims or losses for/or arising out of the services rendered by any subcontractor, person, or firm performing or supplying services, materials or supplies in connection with the performance of the agreement.
- B. Any claims or losses resulting to any person or entity injured or damaged by the vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the agreement in a manner not authorized by the agreement, or by Federal or State statutes or regulations.
- C. Any failure of a vendor, its officers, employees or subcontractors to observe State

and Federal laws, including but not limited to labor and wage laws.

3.4.6 Agreement Provisions:

After the approved vendors are selected, in accordance with **Section 5**, a formal agreement document will be executed between the State and each vendor. In addition, the Examination Vendor Registration and the vendor's response will be included as part of and incorporated into the agreement by reference. The order of precedence is the agreement, the Examination Vendor Registration and the vendor's proposal in response to the Market Conduct Examination Vendor Qualification.

3.4.7 Governing Law:

Each vendor agrees that this agreement shall be governed by the laws of the State of West Virginia. The vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable Federal, State and local Government regulations.

3.4.8 Compliance with Laws and Regulations:

Each vendor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances, Federal, State or municipal, or of any regulating body in which work under this agreement is performed.

Each vendor must furnish certification of authority to conduct business in the State as a condition of agreement award. Such registration is obtained from the Secretary of State who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to this Market Conduct Examination Vendor Qualification. Each vendor shall pay any applicable sales, use, or personal property taxes arising out of this agreement and the transactions contemplated thereby. Any other taxes levied upon this agreement, the transaction, or the equipment, or services delivered pursuant hereto shall be borne by the vendor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this agreement.

All applicable provisions of law and other rules and regulations of any and all governmental authorities relating to licensure and regulation of personnel and to the operation of the State shall be fully complied with by the vendor.

3.4.9 Sub-agreements/Joint Ventures:

Each vendor is solely responsible for all work performed under the agreement and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this agreement. The State will consider the vendor to be the sole point of contact with regard to all contractual matters. The vendor may, with the prior written consent of the State, enter into written sub-agreements for performance of work under this agreement; however, each vendor is totally responsible for payment of all subcontractors.

3.4.10 Term of Agreement:

This agreement will be effective for a three year period beginning January 1, 2013, and ending December 31, 2015, at which time the agreements may, upon mutual consent, be renewed. Such renewals shall be for a period of up to three (3) years maximum or until such time as it is necessary for the WVOIC to obtain a new Market Conduct Examination Vendor Qualification. Notice by Vendor of intent to terminate will not relieve vendor of the

obligation to continue to provide services pursuant to the terms of the agreement.

Any change in Federal or State law, or court actions which constitute binding precedent in West Virginia which significantly alters the vendor's required activities, or any change in the availability of funds, shall be viewed as binding and shall warrant good faith renegotiation of the compensation paid to the vendors by the State and of such other provisions of the agreement that are affected. If renegotiation proves unsuccessful, the agreement may be terminated by the WVOIC upon thirty (30) days written notice to the vendor.

3.4.11 Non-Appropriation of Funds:

If the State is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this agreement by the West Virginia Legislature, the State may terminate the agreement at the end of the affected current fiscal period without further charge or penalty. The State shall give the vendors written notice of such non-allocation of funds as soon as possible after the State receives notice. No penalty shall accrue to the State in the event this provision is exercised.

3.4.12 Agreement Termination:

The WVOIC may terminate any agreement resulting from this Market Conduct Examination Vendor Qualification immediately at any time a vendor fails to carry out its responsibilities or to make substantial progress under the terms of their agreement. The WVOIC shall provide the vendor with notice of performance conditions which are endangering the agreement's continuation. If after such notice the vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the State shall issue the vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination. The agreement may also be terminated upon mutual agreement of the parties upon thirty (30) days' notice.

3.4.13 Changes In Scope:

If changes to the agreement become necessary, a formal agreement change order will be negotiated by the WVOIC and the vendor, to address changes to the terms and conditions, costs or scope of work included under the agreement. An approved agreement change order is defined as one approved by the WVOIC and approved as to form by the Attorney General's Office and placed in the U.S. Mail prior to the effective date of such amendment. An approved agreement change order is required whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements. No changes in scope are to be conducted except at the approval of the State.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.

3.4.14 Liquidated Damages:

Each vendor agrees that liquidated damages shall be imposed at the rate of \$1,000.00 (per day). This clause shall in no way be considered exclusive and shall not limit the State's right to pursue any other additional remedy to which the State may have legal cause for action including further damages against a vendor.

In case of default by the vendor, the State may procure the services from other sources and hold the vendor responsible for any excess cost occasioned thereby.

3.4.15 Record Retention (Access & Confidentiality):

Each vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under an agreement by a vendor. Each vendor shall maintain such records a minimum of five (5) years and make available all records to the State's personnel at vendor's location during normal business hours upon written request by the State within ten (10) days after receipt of the request.

Each vendor shall have access to private and confidential data maintained by the State to the extent required for vendors to carry out the duties and responsibilities defined in this agreement. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State against any and all claims brought by any party attributed to actions of breach of confidentiality by a vendor, subcontractors, or individuals permitted access by a vendor.

PART 4 - QUALIFICATIONS FORMAT

4.1 Qualifications Format:

This part of the Market Conduct Examination Vendor Qualification outlines the format that each vendor must follow and the information that the vendor must include when preparing the proposal. The proposal must be formatted in the same order, providing the information requested as listed below:

Title page - Must state the Market Conduct Examination Vendor Qualification. Submission, the name of the vendor, vendor's business address, telephone number, name of authorized contact person to speak on behalf of the vendor, dated and signed.

Table of Contents - Clearly identify the material by section and page number.

Section I - A statement of the objectives, goals and tasks to show or demonstrate the vendor's view of the nature of the agreement.

Section II - The vendor shall provide a description of the deliverables.

Section III - An outline of the vendor's background and experience, with documentation outlining similar services provided for other regulatory jurisdictions during the past three years and provide the name, address and telephone number of three current references familiar with such services. The vendor must provide a list of personnel who will conduct the project, detailing their training, work experience and hourly fees.

4.2 Evaluation Process:

4.2.1 Method of Evaluation:

The proposals will be evaluated by an Evaluation Committee comprised of three (3) or more representatives of the West Virginia Offices of the Insurance Commissioner in accordance with the criteria and necessary qualifications set forth above.

4.2.2 Qualifications:

Each vendor who meets the technical specifications and meets the minimum standards and qualifications set forth above shall be eligible for placement on the Market Conduct Examination Vendor Qualification List.

The WVOIC does reserve the right to accept or reject any or all of the proposals, in whole or in part, if to do so is felt to be in the best interests of the WVOIC.

Any vendor's failure to provide complete and accurate information may be considered grounds for disqualification. The WVOIC reserves the right if necessary to ask a vendor for additional information to clarify its proposal. Nothing may be added to alter the writing of any proposal after their opening.

4.3 Memorandum of Understanding:

All vendors deemed qualified by the Evaluation Committee will be required, prior to placement on the Market Conduct Examination Vendor List. To execute a Memorandum of Understanding with the state setting forth the general and basic duties and responsibilities of the parties subject to the award of a specific job. Each qualified vendor will also be required to complete a WV-1 – Vendor Registration and a Purchasing Affidavit. (See attached.)

4.4 Placement On Examination Registration Vendor List:

All qualified and selected vendors executing the Memorandum of Understanding will be placed on the Market Conduct Examination Vendor Qualification List and will be eligible to submit bid proposals on specific jobs in accordance with section five.

PART 5 –AWARD OF SPECIFIC JOBS

5.1 Award of Specific Jobs:

As a specific Market Conduct examination project arises and materializes, the job project and specifics will be transmitted by way of a scope of work document to all qualified vendors inviting the submission of project proposals. The request may specify the personnel capabilities necessary to provide the service for the job, including education, experience and skills required to provide the service, the number of particular individuals needed, time frames for commencement and completion of job and any other pertinent and necessary requirements.

5.2 Qualifications Format:

All proposals submitted by vendors must be formatted in the same order, providing the information requested as listed below:

Title page - Must state the Market Conduct Examination Vendor Qualification. Subject and number, the name of the vendor, vendor's business address, telephone number, name of authorized contact person to speak on behalf of the vendor, dated and signed.

Table of Contents - Clearly identify the material by section and page number.

Section I - A statement of the objectives, goals and tasks to show or demonstrate the vendor's view of the nature of the agreement.

Section II - The vendor shall provide a description of the deliverables and the time frame for delivery.

Section III - An outline of the vendor's background and experience, with documentation outlining similar services provided for other regulatory jurisdictions during the past three years and provide the name, address and telephone number of three current references familiar with such services. The vendor must provide a list of personnel who will conduct the project, detailing their training, work experience and hourly fees.

Section IV - A detailed work plan that will identify the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing.

Section V - Vendors are encouraged to propose additional tasks or procedures if they will substantially improve the results of the examination. These items may be outlined within a proposal but the costs must be sealed separately.

Section VI - A schedule of fees for each level of prospective participant on an examination as well as expenses (travel, lodging, etc.) based upon staffing levels, hours and rates for each phase of the engagement.

Section VII - Vendor must enclose completed copies of the forms A through D (copies attached):

- A. WV - 48 - Agreement
- B. WV - 96 - Agreement Addendum
- C. Affidavit
- D. WV - 1 - Vendor Registration
- E. INS-02 – Agreement (Sample)

5.3 Method of Evaluation:

The proposals will be evaluated by an Evaluation Committee comprised of three (3) or more representatives of the West Virginia Offices of the Insurance Commissioner in accordance with the criteria stated below. The agreement may be awarded to any vendor who meets all the mandatory specifications and which accumulates at least seventy (70) points out of one hundred (100) possible points. The selection of the successful vendor will be made by a consensus of the Evaluation Committee and will be based on the following criteria using the point weights specified.

5.4 Evaluation Criteria:

The following are the evaluation factors and maximum points possible for technical point scores:

- Demonstrated proficiency in performing assignments of this nature for West Virginia and other regulatory Jurisdictions and, to a lesser extent, the insurance industry. 35%.
- Personnel capabilities including education, experience, and skills required to provide the service, as well as

sufficient staff resources, to meet the Division's needs and established timeframes.	35%
• Professional fees and expense structure.	30%
Total	100%

5.5 Minimum Acceptable Score:

Vendors must receive a minimum acceptable score ("MAS") of 70% of the total technical points possible. The MAS will be 70% of 70 points, or a technical score of 49 points. Vendor must receive the MAS or greater to be eligible for further consideration and to continue in the evaluation process. All vendors not attaining the MAS shall be disqualified and removed from further consideration.

The State will select the successful vendor based on the most convincing and cost effective proposal, which is not necessarily the lowest bid. Cost is considered, but is not the sole determining factor for the award. The State does reserve the right to accept or reject any or all of the proposals, in whole or in part, if to do so is felt to be in the best interests of the State.

Vendor's failure to provide complete and accurate information may be considered grounds for disqualification. The State reserves the right, if necessary to ask a vendor for additional information to clarify its proposal. Nothing may be added to alter the writing of any proposal after the bid opening.

5.6 Formal Agreement:

Upon the evaluation committee's selection of vendor's proposal to perform the proposed scope of work, said vendor and the Offices of the Insurance Commissioner will execute a Purchase Order in conformance with PART 3, above.

ⁱ These are maximum allowable hourly rates professional fees will account for 30% of the selection criteria for awarding specific jobs. Refer to Section 5.4

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit: _____

Signed: _____

Title: _____

Date: _____

VENDOR

Company Name: _____

Signed: _____

Title: _____

Date: _____

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code* §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

STATE OF WEST VIRGINIA
PURCHASING DIVISION

VENDOR REGISTRATION AND DISCLOSURE STATEMENT

Before a vendor is eligible to sell goods and/or services to the State of West Virginia, the **West Virginia Code §5A-3-12** requires all vendors to have on file with the West Virginia Purchasing Division a completed Vendor Registration and Disclosure Statement. All vendors wishing to participate in the competitive bid process and receive purchase orders from the State of West Virginia exceeding one thousand dollars (\$1,000) are required to complete the Vendor Registration and Disclosure Statement (WV-1 form) and pay a **\$125.00** annual fee. Payment of the annual fee includes access to the **West Virginia Purchasing Bulletin**, in which purchases expected to exceed twenty-five thousand dollars (\$25,000) are advertised. Please complete this form in its **ENTIRETY** and return it with a check or money order made payable to the **STATE OF WEST VIRGINIA** in the amount of **\$125.00**. Incomplete forms will not be processed and will be returned to the vendor. Please send completed form and payment to:

Purchasing Division - Vendor Registration
2019 Washington Street East
P.O. Box 50130
Charleston, WV 25305-0130

Whenever a change occurs in the information submitted, such change shall be reported immediately in the same manner as required in the original disclosure statement (**West Virginia Code §5A-3-12**). Vendors doing business with the State of West Virginia are expected to abide by the **Vendor Code of Conduct** available online at <http://www.state.wv.us/admin/purchase/vrc/vendorconduct.pdf>.

Privacy Notice: The Purchasing Division is required to collect certain information as stated in **West Virginia Code §5A-3-12**, other applicable sections of the **West Virginia Code**, the Vendor Registration and Disclosure Statement forms, and other documents to facilitate the state bidding and contract administration processes. This information is stored in a secure environment, but unless specifically protected under state law, any information provided may be inspected by or disclosed to the public.

If you have any questions concerning this Vendor Registration and Disclosure Statement, please contact the Purchasing Division at (304) 558-2311.

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION
To Be Completed by the Vendor and Returned to the Purchasing Division

1. Legal Name of Company/Individual _____
Bidding Address _____

City/State/Zip _____
Contact Person _____
Telephone Number _____ Fax Number _____

2. Vendor Classified As:

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Estate/Trust |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Non-Profit Organization | <input type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Corporation | [Enter tax classification: D=Disregarded Entity; C=Corporation; P=Partnership] _____ |
| <input type="checkbox"/> Governmental Entity | <input type="checkbox"/> Other (Explain) _____ |

VENDOR REGISTRATION AND DISCLOSURE STATEMENT

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION

To Be Completed by the Vendor and Returned to the Purchasing Division

3. If you have a Federal Employer's Identification Number, enter it. All partnerships, corporations, or companies with employees must have an FEIN.

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For individuals with no FEIN, enter Social Security number.

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4. By providing the following information, I represent that this enterprise is a small business as defined by the **Code of Federal Regulations**, Title 13, Part 121, as appended - which contains detailed industry definitions and related procedures - and/or the characteristics of the enterprise's control, operation and/or ownership are accurately reflected in the information provided. *Check all that apply.*

- ☐ Disabled Small Business Ownership [1]
☐ Minority Small Business Ownership [2]
☐ Small Business Ownership [3]
☐ Veteran Small Business Ownership [4]
☐ Woman Small Business Ownership [5]

The information gathered in question 4 is for data collection efforts only.

5. Are you registering as a new vendor with the Purchasing Division? ☐ No ☐ Yes
6. Are you updating the information previously submitted? ☐ No ☐ Yes
7. Are you completing this form to register a branch/division/subsidiary? ☐ No ☐ Yes
If yes, please list the parent company's name, address, and FEIN.

Company Name: _____

Address: _____

FEIN: _____

8. Has the vendor done business under another name? If so, list the name and address under which the business was conducted.

Name

Street Address, City, and State

VENDOR REGISTRATION AND DISCLOSURE STATEMENT

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION

To Be Completed by the Vendor and Returned to the Purchasing Division

9. List the name, title, city and state of residence for all owners/officers.

If the vendor is an **individual**, list his or her name and city and state of residence, and, if he or she has associates or partners sharing in his or her business, list their names and city and state of residence. If the vendor is a **firm**, list the name and city and state of residence of each member, partner or associate of the firm. If the vendor is a **corporation** created under the laws of this state or authorized to do business in this state, list the names and city and state of residence of the president, vice president, secretary, treasurer and general manager, if any, of the corporation; and the names and city and state of residence of each stockholder of the corporation owning or holding at least ten percent of the capital stock thereof.

Attach an additional sheet if space is needed.

Name	Position	City and State of Residence
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If the vendor has only one owner/officer, list the name, position, and city and state of residence above and please initial here: _____

10. List the name and telephone number of one or more banking institutions to serve as reference for the vendor.

11. What is the latest Dun & Bradstreet number and rating on the vendor (if available)?

12. Is the vendor acting as an agent for some other individual, firm or corporation? If yes, attach statement of the principal authorizing such representation.

☐ No

☐ Yes

As authorized agent of the vendor named herein, I do solemnly swear that the above information is true and complete, in accordance with **WV Code §5A-3-12(e)**.

Vendor Signature

Title

Date

PURCHASING DIVISION USE ONLY

Vendor ID: * _____

Check No. : _____

Memo No. : _____

Date: _____

Entered by: _____